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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re RUBEN S., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

RUBEN S.,

Defendant and Appellant.

G052917

(Super. Ct. No. DL051074)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Julian W.  
Bailey, Judge. Affirmed.

William Paul Melcher, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant  
Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and  
Kathryn Kirschbaum, Deputy Attorneys General, for Plaintiff and Respondent.

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After finding true beyond a reasonable doubt the allegations of the petition that Ruben S., a minor, committed second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)) and inflicted great bodily injury on the victim in doing so, the juvenile court declared him a ward of the court (Welf. & Inst. Code, § 602). He was ordered to perform 100 hours of community service and was placed on formal supervised probation, with a portion of his sentence to be served in a juvenile institution and the remainder in his mother's home.

On appeal, Ruben contends that the juvenile court erred in declining to exclude statements he made to detectives before he was formally arrested. He argues that the statements were a product of a custodial interrogation and, thus, the detectives should have, but failed to, administer *Miranda*<sup>1</sup> warnings to him prior to the questioning. We conclude that even if we were to assume such an error, it was harmless beyond a reasonable doubt because the juvenile court expressly indicated that Ruben's statements were not incriminating and that it interpreted them in favor of his innocence. Because the decision rendered was surely unattributable to the alleged error, we affirm the order without deciding the *Miranda* issue.

## I

### FACTS

Riding home on his bicycle from school one afternoon, the then 17-year-old victim was suddenly confronted by two males whom he had not seen before. One of the males stepped in front of the victim and grabbed the handle bars of his bicycle, causing the victim to fall to the ground in the street. Scared and with his wrist hurting, the victim got up off the ground and moved a couple of steps away from the males who had confronted him. The males left with the victim's bicycle, and the victim walked back to his school where he reported the incident to a teacher and the assistant principal.

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<sup>1</sup> *Miranda v. State of Arizona* (1966) 384 U.S. 436 (*Miranda*).

After discussing the incident with a police officer that same afternoon, the victim went to the hospital to have his hurt wrist evaluated. Following an exam and X-rays, the doctor determined that the victim needed a hard cast. He wore the hard cast for about two weeks and then wore a softer brace for a couple more weeks. He was unable to write during that time.

The next day, a police officer on routine patrol recovered a bike from a male subject that he believed to be the one taken from the victim. Later that day, the victim confirmed it was his bike and the male who had the bike was one of the two that had confronted him.

Approximately three weeks later, investigators met with the victim to show him a “six-pack” photo lineup they had developed with the goal of identifying the second male involved in the incident. The victim indicated that none of the photos were of the person who had physically grabbed his bike.

The investigation continued, and about three months later, an investigator met with the victim once again. This time, the victim was shown six photos sequentially, none of which were the same as those in the original six-pack lineup previously shown to him. When the victim was shown the fourth photo, which was a photo of Ruben, he stated, “That is him.” After seeing the remaining photos, and in response to a question from the investigator, the victim indicated that he was “90 percent positive” about the identification he had made.

Thereafter, two detectives went to meet with Ruben at his school — a continuation high school where Ruben followed an individualized education plan developed for him. A school administrator pulled Ruben out of class and led him to an administrative office room — roughly 8 by 12 feet in size — where the two detectives met with him outside the presence of school personnel. The detectives closed the door to the room and Ruben was asked to take a seat, which he did, in a chair facing away from the door.

The detectives introduced themselves and asked Ruben, who was 17 years old at the time, if he would mind talking to them for a couple minutes and if he was “cool with that.” Ruben replied, “Yea.” In response to questioning by detectives, Ruben admitted to knowing the male subject from whom the stolen bicycle had been recovered and to having heard the male subject confess to being arrested, along with a “friend,” for stealing a kid’s bicycle. Ruben, however, denied any involvement and, upon being shown a picture of the victim’s bicycle, stated that he had never seen the bicycle before. Although the bike had not been tested for fingerprints or DNA, the detective communicated that it had been; Ruben continued to deny involvement. Hoping to prompt an admission, the detective then told Ruben that “basically [he had] been identified as the person that took that bike.” The denials continued. Throughout this tape-recorded interview, the detectives, at least one of whom was wearing a suit with a visible badge,<sup>2</sup> stood behind Ruben near the only door that provided a way out of the room.

After three minutes of questioning, one of the detectives conveyed to Ruben that he was under arrest for robbery. Ruben was handcuffed and advised of his *Miranda* rights. Ruben indicated he understood and continued to converse with the detectives for about three more minutes.<sup>3</sup>

Ruben was charged with one count of second degree robbery with an enhancement for infliction of great bodily injury. At trial, the victim testified about the circumstances surrounding the alleged stealing of his bicycle. He stated that it all “happened quickly” and that he was “shaken up” by the incident, but that he observed the two males involved right before the incident happened and for about 10 to 15 seconds

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<sup>2</sup> At the time of trial, neither Ruben nor the suit-wearing detective could recall whether the other detective was in uniform.

<sup>3</sup> The statements made by Ruben after he was advised of his rights were agreed to by the prosecution and defense to be irrelevant, and they were thus excluded at trial. The exclusion is not at issue in this appeal.

after getting up from the ground. In addition, he made an in-court identification of Ruben as the one who physically took the bicycle and testified concerning the sequential photo lineup shown to him by detectives. As to both of these identifications, the victim stated that he was *not* “completely sure,” but reiterated what he had told detectives at the time of the sequential photo lineup — that he was “90 percent positive.”

The court also received testimony from the police officer who recovered the bicycle and from the detective who showed the victim the two different photo lineups and questioned Ruben at his school. As to the latter, defense counsel moved to exclude all pre-*Miranda* statements made by Ruben to the detective, arguing that the entire interview at the school was a “custodial interrogation” and, therefore, Ruben should have been advised of his *Miranda* rights from the outset. After listening to the recorded interview, and after hearing testimony from Ruben for the limited purpose of ruling on the *Miranda* issue, the juvenile court denied the request to exclude Ruben’s statements. The court’s denial was based on the “totality of the circumstances,” including Ruben’s age, the tone of voice and demeanor of Ruben and of the detectives, and Ruben’s responses to the questions.

Upon the completion of testimony and argument from both attorneys, the juvenile court found “the allegations true beyond a reasonable doubt.” Ruben timely appealed.

## II

### DISCUSSION

Ruben contends that the interview conducted by the detectives at his school was a custodial interrogation and, thus, he should have been advised of his *Miranda* rights prior to any questioning. He argues the juvenile court’s failure to exclude his pre-*Miranda* statements was prejudicial error. Because we find that if any such error occurred, it was harmless beyond a reasonable doubt, we need not reach the *Miranda* issue.

In the interest of protecting the Fifth Amendment privilege against self-incrimination, the *Miranda* court established the prophylactic rule that “the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.” (*Miranda, supra*, 384 U.S. at p. 444.) The required procedures include warning the person that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. A defendant may waive any or all of these rights if done voluntarily, knowingly and intelligently.

Because the need for *Miranda* warnings is only triggered by a “custodial interrogation,” our legal analysis typically begins with determining whether questioning initiated by law enforcement officers occurred after the defendant was “taken into custody or otherwise deprived of his freedom of action in any significant way.”<sup>4</sup> (*Miranda, supra*, 384 U.S. at p. 444.) If a violation is found, the subsequent question on appeal is whether the error is harmless under *Chapman v. State of California* (1967) 386 U.S. 18, 24 (*Chapman*). To be deemed harmless, it must appear beyond a reasonable doubt that the error did not contribute to the verdict obtained. (*People v. Neal* (2003) 31 Cal.4th 63, 87.) Alternatively stated, an error is prejudicial if there is a reasonable

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<sup>4</sup> The test is an objective one, with the pertinent inquiry being whether there was “‘a formal arrest or restraint on freedom of movement’ of the degree associated with a formal arrest.”” (*People v. Ochoa* (1998) 19 Cal.4th 353, 401.) Making this determination requires an evaluation of the totality of the circumstances, including, but not limited to, factors such as: (1) whether the suspect has been formally arrested; (2) absent formal arrest, the length of the detention; (3) the location; (4) the ratio of officers to suspects; (5) the demeanor of the officer(s), including the nature of the questioning; (6) whether the person was informed that he or she was a suspect; (7) whether restrictions were placed on the suspect’s freedom of movement; (8) whether the police were aggressive, confrontational, and/or accusatory; and (9) whether the police used interrogation techniques to pressure the suspect. (*People v. Aguilera* (1996) 51 Cal.App.4th 1151, 1162 (*Aguilera*).)

possibility the wrongfully admitted evidence might have contributed to the verdict. (*Chapman, supra*, 386 U.S. at p. 24.) “To say that an error did not ‘contribute’ to the ensuing verdict is not, of course, to say that the [trier of fact] was totally unaware of that feature of the trial later held to have been erroneous.” (*Yates v. Evatt* (1991) 500 U.S. 391, 403, disapproved on another point in *Estelle v. McGuire* (1991) 502 U.S. 62, 72, fn. 4.) Rather, it is to find the error “‘unimportant in relation to everything else the [trier of fact] considered on the issue in question.’” (*People v. Gonzalez* (2012) 210 Cal.App.4th 875, 884.)

Here, even if we presume that the entire interview by detectives at Ruben’s school was a custodial interrogation, a matter on which we express no opinion, a thorough review of the record demonstrates that the “verdict actually rendered in *this* trial was surely unattributable to the error.” (*Sullivan v. Louisiana* (1993) 508 U.S. 275, 279 (*Sullivan*)). Because the trier of fact in this case was the juvenile court, we have something that typically is not present in jury cases — an explanation of why the court found the allegations against Ruben to be true beyond a reasonable doubt. Specifically, after receiving all testimony and prior to hearing argument from defense counsel, the juvenile court stated:<sup>5</sup> “I found [the victim] to be credible and believable.” “[F]rankly, your client’s statements to the police, I don’t think they inculcate him in any way. [¶] . . . [¶] . . . Counsel argues that part of - - part of the statements are self-serving and other parts are evasive. . . . [¶] . . . *Really it comes down to whether or not the testimony of [the victim] satisfies me beyond a reasonable doubt.* So if that helps you focus your argument, spend your time on that, because it is really where I am - - I am focused. [¶] *The other aspects of this case . . . kind of are in the realm of circumstantial evidence susceptible to two reasonable interpretations and I adopt the interpretation which points to innocence.*” (Italics added.)

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<sup>5</sup> Defense counsel’s few intervening comments have been omitted.

Thereafter, following closing argument from both sides, which was mostly directed at the trustworthiness of the victim's out-of-court identification and in-court testimony, the court reemphasized its reliance on the victim's statements and testimony and minimal reliance, if any, on Ruben's statements to detectives. Explaining its finding that the allegations against Ruben were true beyond a reasonable doubt, the juvenile court commented: "The statements by [Ruben] by themselves really don't amount to much. And the officer's testimony about what he took to be evasive or not evasive really doesn't amount to much. But the powerful testimony by [the victim], who essentially saw a dozen pictures, the first six he knew did not include the picture of the person who had taken his bike and broken his arm. . . . He remembered a lot of important details, in my opinion, such that what he had to say really rang true."

Ruben asserts that the alleged error was not harmless because the only other evidence against him was the victim's identification of Ruben as the perpetrator, an identification which Ruben characterizes as "unsure" and "not unequivocal." But, the test for *Chapman* error does not turn on the weight of the remaining evidence and does not involve a reweighing of the evidence. (See *Sullivan, supra*, 508 U.S. at p. 279 ["The inquiry . . . is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in *this* trial was surely unattributable to the error"]; *People v. Flood* (1998) 18 Cal.4th 470, 513-514 (conc. opn. of Werdegarr, J.) [impermissible to reweigh evidence in *Chapman* error test].) Ruben had the opportunity to attack the reliability of the identification made by the victim, and it, in fact, was Ruben's sole defense. The juvenile court, as the trier of fact, clearly rejected those attacks when it found the victim's testimony and identification of Ruben as the perpetrator to be "credible," "believable" and "powerful." We do not second guess the trier of fact on such matters of credibility, and the claimed error is entirely unrelated, directly or indirectly, to the victim's testimony, including his credibility.

For the foregoing reasons, we are convinced beyond a reasonable doubt that the claimed error “did not contribute to the verdict obtained.” (*Chapman, supra*, 386 U.S. at p. 24; see *In re Corey* (1964) 230 Cal.App.2d 813, 826 [“The testimony of a robbery victim, if believed by the trier of facts, is sufficient of itself to warrant a conviction, and no corroborative evidence is required”]; cf. *Aguilera, supra*, 51 Cal.App.4th at p. 1166 [error not harmless when minor’s statements obtained in violation of *Miranda* were “the most compelling evidence of his guilt”]; *In re Garth D.* (1976) 55 Cal.App.3d 986, 1001 [error not harmless when defendant’s admissions obtained in violation of *Miranda* were only direct evidence of guilt].)

### III

#### DISPOSITION

The order is affirmed.

MOORE, J.

WE CONCUR:

O’LEARY, P. J.

ARONSON, J.